

2003 ASSEMBLY BILL 273

AN ACT *to amend* 343.305 (9) (a) (intro.), 343.305 (9) (am) (intro.), 343.305 (9) (c), 343.305 (11), 800.04 (1) (d) and 800.07 of the statutes; **relating to:** allowing municipal courts to hold refusal hearings.

Analysis by the Legislative Reference Bureau

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 343.305 (9) (a) (intro.) of the statutes is amended to read:
2 343.305 **(9)** (a) (intro.) If a person refuses to take a test under sub. (3) (a), the
3 law enforcement officer shall immediately take possession of the person's license and
4 prepare a notice of intent to revoke, by court order under sub. (10), the person's
5 operating privilege. If the person was driving or operating a commercial motor
6 vehicle, the officer shall issue an out-of-service order to the person for the 24 hours
7 after the refusal and notify the department in the manner prescribed by the

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1 department. The officer shall issue a copy of the notice of intent to revoke the
2 privilege to the person and submit or mail a copy with the person's license to the
3 circuit court for the county in which the arrest under sub. (3) (a) was made or to the
4 municipal court in the municipality in which the arrest was made if the arrest was
5 for a violation of a municipal ordinance under sub. (3) (a) and the municipality has
6 a municipal court. The officer shall also mail a copy of the notice of intent to revoke
7 to the attorney for that municipality or to the district attorney for that county, as
8 appropriate, and to the department. The notice of intent to revoke the person's
9 operating privilege shall contain substantially all of the following information:

10 **SECTION 2.** 343.305 (9) (am) (intro.) of the statutes is amended to read:

11 343.305 **(9)** (am) (intro.) If a person driving or operating or on duty time with
12 respect to a commercial motor vehicle refuses a test under sub. (3) (am), the law
13 enforcement officer shall immediately take possession of the person's license, issue
14 an out-of-service order to the person for the 24 hours after the refusal and notify the
15 department in the manner prescribed by the department, and prepare a notice of
16 intent to revoke, by court order under sub. (10), the person's operating privilege. The
17 officer shall issue a copy of the notice of intent to revoke the privilege to the person
18 and submit or mail a copy with the person's license to the circuit court for the county
19 in which the refusal is made or to the municipal court in the municipality in which
20 the refusal is made if the person's refusal was in violation of a municipal ordinance
21 and the municipality has a municipal court. The officer shall also mail a copy of the
22 notice of intent to revoke to the attorney for that municipality or to the district
23 attorney for that county, as appropriate, and to the department. The notice of intent
24 to revoke the person's operating privilege shall contain substantially all of the
25 following information:

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SECTION 3. 343.305 (9) (c) of the statutes is amended to read:

343.305 **(9)** (c) If a law enforcement officer informs the circuit or municipal court that a person has refused to submit to a test under sub. (3) (a) or (am), the court shall be prepared to hold any requested hearing to determine if the refusal was proper. The scope of the hearing shall be limited to the issues outlined in par. (a) 5. or (am) 5. Section 967.055 applies to any hearing under this subsection.

SECTION 4. 343.305 (11) of the statutes is amended to read:

343.305 **(11)** RULES. The department shall promulgate rules under ch. 227 necessary to administer this section. The rules shall include provisions relating to the expeditious exchange of information under this section between the department and law enforcement agencies, circuit courts, municipal courts, attorneys who represent municipalities, and district attorneys. The rules may not affect any provisions relating to court procedure.

SECTION 5. 800.04 (1) (d) of the statutes is amended to read:

800.04 **(1)** (d) If a defendant charged with the violation of an ordinance which is in conformity with s. 346.63 (1) or (5) pleads not guilty and within 10 days after entry of the plea requests a jury trial and pays the required fees, the municipal judge shall promptly transmit all papers and fees in the cause to the clerk of the circuit court of the county where the violation occurred for a jury trial under s. 345.43. The plea of not guilty and request for jury trial may be made by mail. If the person refused to take a test under s. 343.305 (3) and requested a hearing under s. 343.305 (9) to determine if the person's refusal was proper, the papers and fees involved in that action shall be transferred to the same circuit court, which shall conduct the refusal hearing. The amount of deposit set out in the citation shall accompany the mailed request. Upon receipt of the request, the circuit court shall set a time for trial. Any

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1 deposit made personally or by mail is forfeited upon nonappearance at the time set
2 for trial. The required fee for a jury is prescribed in s. 814.61 (4).

3 **SECTION 6.** 800.07 of the statutes is amended to read:

4 **800.07 Discovery in municipal court.** Neither party is entitled to pretrial
5 discovery in any action in municipal court, including refusal hearings held by a
6 municipal court under s. 343.305 (9), except that if the defendant moves within 30
7 days after the initial appearance in person or by an attorney and shows cause
8 therefor, the court may order that the defendant be allowed to inspect documents,
9 including lists of names and addresses of witnesses, if available, and to test under
10 s. 804.09, under such conditions as the court prescribes, any devices used by the
11 plaintiff to determine whether a violation has been committed.

12 **SECTION 7. Initial applicability.**

13 (1) The treatment of sections 343.305 (9) (a) (intro.), (am) (intro.), and (c),
14 800.04 (1) (d), and 800.07 of the statutes first applies to refusals committed on the
15 effective date of this subsection, but does not preclude the counting of previous
16 suspensions, revocations, or convictions for purposes of determining the period that
17 a person's operating privilege is revoked.

18 **SECTION 8. Effective date.**

19 (1) This act takes effect on the first day of the 4th month beginning after
20 publication.

21 (END)